

“NRC” – Not Really Concerned. Again

Remarks prepared by Nuclear Energy Information Service (NEIS)

for Congressional Briefing on Lake Michigan Nuclear Issues

April 7, 2021

NEIS has had the opportunity to observe the operations of the Nuclear Regulatory Commission for almost four decades. We can say with confidence that since the moment that the pro-nuclear, former New Mexico Senator Pete Domenici forced then NRC Chair Shirley Jackson to curtail regulatory oversight under threat of severe budget reductions for NRC in the 1990s, the Agency has failed to function as a viable or trustworthy regulator of the nuclear industry.

The result of this is an Agency which has been characterized by many Washington, D.C. Congressional staff – and certainly many of us from the public – as a “captive agency” of the industry it is charged to regulate. As such the safety of the public and the environment is severely compromised, and remains so until the only body capable of direct oversight of this dangerous situation – the Congress — forcefully intervenes. If a Senator from New Mexico can stifle effective regulation through threat of budget loss, then Senators in today’s Congress can force **effective** regulation in the same manner.

We provide examples – certainly not an exhaustive list – of ways the NRC has failed in its regulatory mandate, just within the last year. A more thorough and complete list could easily be provided, should Congress wish to fund such an investigation. Our organizations stand by eagerly to assist in this endeavor.

1) *Thwarting public process and participation:*

- Using COVID as a pretext, NRC reneged on its pledge to conduct 8 in-person public participation meetings in New Mexico regarding the licensing of a proposed “centralized interim storage” facility, and instead substituted a reduced number of virtual online sessions using the WebEx platform. It rejected requests from the Senators from New Mexico and members of the public to delay the meetings until such time as the meetings could be conducted in-person, even though there was no critical regulatory need or timeline that mandated holding the sessions.
- Members of the public experienced numerous operational failures in their attempts to participate using WebEx. The system required using BOTH a telephone AND a computer to fully participate, this in a largely rural area with poor connectivity to the Internet and cell phones. Many participants were dropped from the sessions, could not hear or be understood, if using phones could not see the PowerPoints being presented. Much of the time during sessions was wasted just trying to determine if speakers were connected, could be heard, or could respond to queuing.

- NRC was informed repeatedly in comments about these flaws, yet did nothing to change their system, nor delay the so-called public meetings until a better system was made available. No replies were received by NEIS for the complaint reports they submitted.
- In February-March, 2021, as part of the Palisades NPP license transfer process involving HOLTEC International, many documents were not made available to nor could be found by the public in the process of preparing their legal response. Some links to documents that NRC provided did not work. Then, at the last minute, over 200 new documents were added to the docket that were not there before. When an extension of time was requested by members of the public to allow for examination of the now-available documents, the NRC denied this request.
- In March 2021, a similar request for extension of the comment period relating to the Point Beach NPP operating license extension out to 80- years was also denied.
- NEIS has NEVER received follow-up information requested of and promised by NRC staff during webinars and phone conference calls. Ever.
- NRC rarely responds to direct questions from the public with the information requested; instead, NRC staff quote sections of relevant regulations that they claim NRC enforces, even when confronted with lack of such enforcement.

2) NRC technical decisions “arbitrary and capricious” – but always favor industry requests

- Recall – the politically appointed 5-person Commission rejected the technical advice of its own staff in rejecting the installation of protective vents on old GE Mark-I reactors in the U.S. after the Fukushima nuclear disaster, although it was universally regarded by technical people as being THE most important and effective response the U.S. nuclear industry could make as “lessons-learned” from the Japanese Disaster.
- On its initiative and at the request of the nuclear industry, the NRC is beginning to evaluate the extension of reactor operating licenses out to 100 years. Reactors were initially granted a 40-year operating license, with an optional 20 year extension, which most reactor operators have been granted. Wisconsin’s Point Beach NPP owner NextEra is requesting an extension out to 80 years.
- For decades and after their own evaluations, NRC determined that Point Beach and Palisades NPPs were the worst and second-worst reactors in the nation prone to a significant safety-related condition called “embrittlement.” Now, with license transfers and potential additional 20-year extensions of operating

licenses imminent at both reactors, they don't see it as a problem; and NRC refuses to conduct the necessary evaluation to verify that claim.

- For decades NRC consistently approved reactor license extensions in the absence of a functional high-level radioactive waste (HLRW) disposal facility, on the grounds that it was “confident” a solution for disposal would be found – the legendary “waste-confidence rule.” This rule was the justification for rejecting citizen interventions against continued operation of reactors without a waste solution. Finally, the U.S. courts intervened in rejecting this absurd and unsubstantiated “waste confidence” claim, and ordered NRC to re-investigate the issue, placing a temporary injunction against reactor license extensions pending this revision, which NRC finally complete in 2013.
- NRC currently maintains a “need” for establishing “centralized interim storage” (CIS) facilities for the alleged temporary consolidation of HLRW. Two sites have been proposed, one in New Mexico, one in Texas. Yet, during the “waste-confidence” legal battle, NRC told the courts that HLRW could be stored safely at current reactor sites for up to 100 years – thus contradicting the “urgent” need to move and consolidate the HLRW.
- The NRC increasingly allows for converting currently mandatory forms of inspection and nuclear plant maintenance to “voluntary” on the part of nuclear utilities. They also continue to require fewer inspections and at greater intervals between inspections. This type of self-regulation did not go well for the Boeing Corporation and the 737-X aircraft.
- NRC refuses to order utilities to conduct re-evaluations of seismic threats at U.S. reactors, despite the fact that in most cases, this information has not been recalculated since the original licenses were granted over 40 years ago – thus ignoring any geologic data or revised thinking obtained since initial licensing.

3) *Lack of transparency and outright deception:*

- After the Fukushima nuclear disaster in Japan, it was revealed that NRC had deliberately kept information from the public of serious concerns that some reactors were highly susceptible to river flooding caused by dam breaches upstream of those reactors.
- Concerns have recently emerged that NRC is in the process of covering up or minimizing a suspected Feb. 3, 2021 partial meltdown of the reactor at the NIST Center for Neutron Research near Gathersburg, MD.

4) *Erratic and questionable response to operating reactors during COVID-19 pandemic:*

- NRC allowed reactor refueling and maintenance operation to continue during the COVID-19 pandemic, bringing hundreds of out-of-state workers into states that were trying to maintain a quarantine. It did so through a variety of means, included allowing utilities to defer some maintenance; increasing allowed overtime to levels regarded as unsafe by institutions and agencies like OSHA, national Safety Council, and CDC.
- NRC claims it did not track reports of COVID-positives at reactors, and either had no numbers or declined to provide them if it did have the numbers. Anecdotal reports gathered independently by citizen groups indicated that some reactor sites had hundreds of COVID-positive worker cases.
- NEIS attempted to get the offices of Illinois Senators Durbin and Duckworth to exert greater oversight and accountability from NRC at a time when Illinois Governor JB Pritzker was trying to quarantine Illinois as part of the COVID response. The Senate staff asked us to provide a list of recommended actions for NRC, which we did in cooperation from several other public interest and safe energy groups from around the country facing the same circumstances. Allegedly these were given to and/or discussed with the NRC. No reply to our recommendations have been received to date, as we now enter a fourth wave of the COVID pandemic.

So that these concerns above are not dismissed as the mere protestations of the unwashed and uninformed lay public, we provide the following professional observations and determinations made by experts in the field of nuclear power operations and safety. They are messages that this Congress ignores at the Nation's peril:

FROM THE 2012 FUKUSHIMA REPORT TO THE JAPANESE DIET:

“The regulators ***did not monitor or supervise nuclear safety***. The lack of expertise resulted in ***“regulatory capture,”*** and the ***postponement of the implementation of relevant regulations***.

“They avoided their direct responsibilities by letting operators apply regulations on a voluntary basis. Their independence from the political arena, the ministries promoting nuclear energy, and the operators was a mockery. They were incapable, and lacked the expertise and the commitment to assure the safety of nuclear power. Moreover, the organization lacked transparency. Without the investigation by this Commission, operating independently of the government, many of the facts ***revealing the collusion between the regulators and other players*** might never have been revealed.”

--NAIIC Report, Nuclear Accident Independent Investigation Commission, p.20

The “regulatory capture” of Japan’s nuclear industry

‘The Commission’s examination of the way safety regulations are deliberated and amended reveals **a cozy relationship between the operators, the regulators and academic scholars** that can only be described as totally inappropriate. In essence, the regulators and the operators prioritized the interests of their organizations over the public’s safety, and decided that Japanese nuclear power plant reactor operations “will not be stopped.”

“Because the regulators and operators have consistently and loudly maintained that “the safety of nuclear power is guaranteed,” they had a mutual interest in averting the risk of existing reactors being shut down due to safety issues, or of lawsuits filed by anti-nuclear activists. **They repeatedly avoided, compromised or postponed any course of action, and any regulation or finding that threatened the continued operation of nuclear reactors.** The FEPC has been the main organization through which **this intransigent position** was maintained among the regulatory agencies and in the academic world.

Our investigation focused on the significant lobbying role taken by FEPC on behalf of the operators, and scrutinized the relationship between the operators and regulators. The Commission found that **the actual relationship lacked independence and transparency, and was far from being a “safety culture.” In fact, it was a typical example of “regulatory capture,” in which the oversight of the industry by regulators effectively ceases.** We found examples of this in the neutering of revisions in the Guideline for Anti-seismic Design, and the improper discussions that took place on regulating severe accident countermeasures.”

--NAIIC Report, Nuclear Accident Independent Investigation Commission, p.43

FROM FORMER NRC CHAIR, DR, GREGORY JACZKO:

“I saw things up close that I was not meant to see: an agency overwhelmed by the industry it was supposed to regulate and a political system determined to keep it that way....When I started at NRC, I gave no thought to the question of whether nuclear power could be controlled. By the end, I no longer had that luxury. *I know nuclear power is a failed technology.* (emphasis ours)

--Dr. Gregory Jaczko, former Chair of the U.S. Nuclear Regulatory Commission, *Confessions of a Rogue Regulator*, pp. vii and ix.

To conclude – as Japanese officials who examined the failures surrounding the Fukushima nuclear disaster concluded: regulations that are not enforced are useless, and are not regulations at all. We would go one step further to add – such unenforced regulations by a captive regulatory agency **is worse than no regulations at all**, since it provides the illusion of protection and safety when in fact none exists.

The only body that has the power to correct this corrupt situation is Congress. We appeal to the elected officials from the states adjoining Lake Michigan to put their verbal concerns for the Lake into necessary action. In particular we appeal to the Illinois delegation representing the most nuclear reliant state in the U.S. to initiate Congressional action, since the 11 operating reactors in Illinois make it the most likely probabilistically speaking to experience a nuclear incident.

Thank you for your consideration of these views. We await your response ***and actions***.